

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 2079, H.D. 1, RELATING TO SEARCH WARRANTS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 18, 2016

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General respectfully opposes the changes made to H.B. No. 2079 in H.D. 1. We also provide comments on the original bill that the purpose of the bill is already substantively accomplished by existing Hawaii law.

This bill requires a government entity to secure a search warrant to obtain location information of an electronic device. This bill is unnecessary as section 803-47.6(d) and (e), Hawaii Revised Statutes (HRS), already requires a government entity to obtain a search warrant or a court order based upon probable cause, the functional equivalent of a search warrant, to obtain location information of an electronic device from an electronic communication service or remote computing service provider.

The H.D. 1 adds the wording "if it is able to do so without obtaining such information from an internet service provider or the manufacturer of the device" to subsection (b) of the new section being added to chapter 803, HRS, by section 1 of the bill. Subsection (b) is the subsection that provides exceptions to the warrant requirement. The only practical ways to obtain location information of an electronic device are from an internet service provider or the manufacturer of the device, however, so the added wording in H.D. 1 might render it impossible for a government entity to obtain location information in any of the situations enumerated in subsection (b) of the bill.

Therefore the Department of the Attorney General respectfully opposes the changes to H.B. No. 2079, H.D. 1, discussed above. Thank you for the opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i

March 18, 2016

RE: H.B. 2079, H.D. 1; RELATING TO SEARCH WARRANTS.

Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu ("Department"), submits the following comments and suggested amendment to H.B. 2079, H.D. 1.

When H.B. 2079 was previously considered by the House Committee on Judiciary, the Department of the Prosecuting Attorney objected to the bill. The Department's objections were based on technical and drafting issues, not the underlying intent of the bill. The Department was not, and is not, opposed to the idea of requiring that law enforcement establish probable cause in order to obtain the location information of an electronic device.

In any event, when HB 2079 emerged from the House Committee on Judiciary, the H.D. 1 version did address our concerns, but also added certain problematic language. To address the remaining issues, we ask that you **remove the following language from page 1, lines 11-12, of H.B. 2079, H.D. 1:**

if it is able to do so without obtaining such information from an internet service provider or the manufacturer of the device

Based on recent discussions, it is our understanding that the House Committee on Judiciary is amenable to this revision.

Although the Department continues to believe that HB 2079, H.D. 1, is unnecessary, the Department agrees that these changes—if our suggested amendment is included—would be consistent with other provisions of law and that they address the legitimate concerns previously raised by law enforcement. For that reason, the Department respectfully recommends that the Senate Committee on Judiciary and Labor adopt the amendment noted above. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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CHIEF

MARIE A. McCAULEY
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DEPUTY CHIEFS

OUR REFERENCE JM-NTK

March 18, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: House Bill No. 2079, H.D. 1, Relating to Search Warrants

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2079, H.D. 1, Relating to Search Warrants.

As it is written, the Honolulu Police Department would not be able to obtain real-time location in an emergency since the information is available only from the internet service provider and/or manufacturer of the device. Cellular phone service providers are in fact one and the same as internet carriers and are recognized as such. They are the keepers of the information being sought when asking for this data.

The Criminal Investigation Division has the responsibility of investigating missing persons and activating the Maile Amber Alert system. We often need to obtain real-time location information from cellular phone providers when a person is reported missing. The use of this tool is vital in locating the missing person when it is a matter of life or death. We have had much success in utilizing this tool to locate missing persons. This method is of such value that families often ensure that elder family members keep their cellular phones with them for this reason.

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
March 18, 2016
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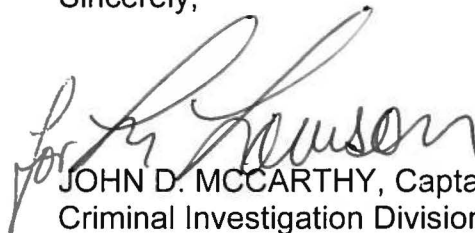
We would also be unable to employ this technique if permission was granted by the owner in the case of a device being stolen or to respond to emergency services since real-time location services are kept by the cellular phone/internet service providers. Once again, without this valuable tool, we would not be able to provide the needed services.

We must be able to obtain real-time location services by consent and in emergency situations by going to the source of this data, the internet service provider and/or the device manufacturer. In other nonemergency or lack of consent instances, we would obtain a search warrant to seek the proper legal approval.

It is for these reasons that we strongly oppose House Bill No. 2079, H.D. 1, Relating to Search Warrants.

Thank you for the opportunity to testify.

Sincerely,


JOHN D. MCCARTHY, Captain
Criminal Investigation Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2016 1:04 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HB2079 on Mar 18, 2016 10:00AM*

HB2079

Submitted on: 3/15/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Chang	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Subject: *Submitted testimony for HB2079 on Mar 18, 2016 10:00AM*

HB2079

Submitted on: 3/16/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

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